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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSE GRANATO, STEPHANIE
LANDRUM, SELESTIA ORDWAY, and
JANICE ZARAD, on behalf of themselves
and all others similarly situated,

Case No. 5:22-cv-2316

**DEFENDANT APPLE INC.'S
NOTICE OF REMOVAL**

Plaintiffs,

v.

APPLE INC.,

Defendant.

1 **TO THE CLERK OF COURT, PLAINTIFFS, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant Apple Inc. (“Apple”), through undersigned
 3 counsel, hereby removes the above-captioned action from the Superior Court of the State of
 4 California for the County of Santa Clara to the United States District Court for the Northern District
 5 of California, pursuant to the Class Action Fairness Act (“CAFA”) and 28 U.S.C. §§ 1332(d),
 6 1441, 1446, and 1453.

7 **I. PROCEDURAL AND FACTUAL BACKGROUND**

8 1. On or about March 11, 2022, Plaintiffs Jesse Granato, Stephanie Landrum, Selestia
 9 Ordway, and Janice Zarad (“Plaintiffs”) filed a Class Action Complaint (the “Complaint”) in the
 10 Superior Court of the State of California, County of Santa Clara, captioned *Jesse Granato, et. al*
 11 *v. Apple Inc.*, Case No. 22CV395280. A copy of the Complaint is attached hereto as **Exhibit A**.

12 2. On March 14, 2022, Plaintiffs purported to effectuate service of the Complaint and
 13 Summons on Apple. A copy of the Superior Court Civil Case Cover Sheet is attached hereto as
 14 **Exhibit B**. A copy of the Summons is attached hereto as **Exhibit C**. A copy of the Civil Lawsuit
 15 Notice is attached hereto as **Exhibit D**. A copy of the Santa Clara County Superior Court
 16 Alternative Dispute Resolution Information Sheet is attached hereto as **Exhibit E**. A copy of the
 17 Santa Clara County Complex Civil Guidelines is attached hereto as **Exhibit F**. A copy of the
 18 Superior Court Docket Sheet is attached hereto as **Exhibit G**. On March 18, 2022, Apple was
 19 served with the Order Deeming Case Complex and Staying Discovery and Responsive Pleading
 20 Deadline, attached hereto as **Exhibit H**. Copies of all Notices of Service of Process are attached
 21 hereto as **Exhibit I**.

22 3. The Complaint alleges that Plaintiffs purchased iPhones that purportedly required
 23 repairs that were not covered by “Apple’s One (1) Year Limited Warranty” (the “Warranty”). Ex.
 24 A (“Compl.”) ¶¶ 11-18. Plaintiffs Granato, Landrum, and Zarad allege that they paid Apple to
 25 repair their iPhones, while Plaintiff Ordway alleges that the price Apple quoted for repair was
 26 more than she could afford. *Id.* ¶¶ 12, 14, 16, 18. The Complaint alleges that “Apple deliberately
 27 frustrates its customers’ efforts to repair their own devices or at a repair shop of their choosing by
 28 imposing restrictions on the repair of its products.” *Id.* ¶ 23.

1 4. Plaintiffs bring this action on behalf of themselves as well as a proposed class of
 2 “[a]ll persons and entities residing in the United States who, in the last four years from the date of
 3 the filing of this complaint: (1) bought an Apple Product, or (2) paid Apple or an Apple Authorized
 4 Service Provider for an Apple Product repair that was not covered by Apple’s Limited Warranty,
 5 AppleCare, or AppleCare+.” *Id.* ¶ 82.

6 5. The Complaint alleges that Apple violated (1) California’s Unfair Competition Law
 7 (California Business & Professions Code § 17200), *id.* ¶¶ 90-97; (2) the Magnuson-Moss Warranty
 8 Act (15 U.S.C. § 2301), *id.* ¶¶ 98-106; and (3) California’s Consumers Legal Remedies Act
 9 (California Civil Code § 1750), *id.* ¶¶ 107-15.

10 6. The Complaint also claims that Plaintiffs are entitled to restitution of the profits
 11 that Apple allegedly unjustly obtained from Plaintiffs and the proposed class by purportedly
 12 “imposing unlawful repair restrictions.” *Id.* ¶¶ 116-22.

13 7. The Complaint further states that Plaintiffs seek “actual damages, punitive
 14 damages, restitution, non-restitutionary disgorgement, and/or any other form of monetary relief
 15 provided by law.” *Id.* at Prayer for Relief, ¶ B. Plaintiffs also seek injunctive relief prohibiting
 16 Apple from engaging in purportedly “unfair” and “illegal” practices. *Id.* ¶ 97 & Prayer for Relief,
 17 ¶¶ C-D.

18 **II. THIS COURT HAS JURISDICTION PURSUANT TO CAFA**

19 8. This case is removable, and this Court has jurisdiction over this action pursuant to
 20 CAFA and 28 U.S.C. §§ 1332(d), 1441, and 1453, because (1) this case is a putative class action
 21 with more than 100 members in the proposed class, (2) there is minimal diversity, since Plaintiffs
 22 and Apple are citizens of different states and, alternatively, at least one member of the proposed
 23 class and Apple are citizens of different states, and (3) the Complaint places in controversy an
 24 amount that exceeds \$5 million in the aggregate, taking into account all damages and equitable
 25 relief sought on behalf of Plaintiffs and the proposed class, exclusive of interests and costs. *See*
 26 28 U.S.C. §§ 1332(d)(2), (d)(5)(B), (d)(6).

27 9. A notice of removal “need not contain evidentiary submissions.” *Dart Cherokee*
 28 *Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014); *see also Salter v. Quality Carriers*,

1 *Inc.*, 974 F.3d 959, 963 (9th Cir. 2020) (same). Apple must provide only “a short and plain
 2 statement of the grounds for removal,” 28 U.S.C. § 1446(a), that contains “plausible allegation[s]”
 3 that the jurisdictional requirements of CAFA are satisfied, *Dart Cherokee*, 574 U.S. at 89. Thus,
 4 while Apple denies any and all liability as to Plaintiffs’ individual claims and as to the claims of
 5 the putative class, and while Apple expressly reserves all of its rights—including but not limited
 6 to its right to file motions challenging the pleadings—each of the jurisdictional requirements of
 7 CAFA is satisfied here.

8

9 **A. This Is A Putative Class Action In Which The Proposed Class Readily Exceeds
 10 100 Members**

11 10. A “class action” under CAFA includes any civil action filed under Federal Rule of
 12 Civil Procedure 23 or a “similar State statute or rule of judicial procedure authorizing an action to
 13 be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

14 11. This lawsuit meets this definition of a class action. *See* Cal. Code Civ. Proc. § 382
 15 (“[W]hen the question is one of a common or general interest, of many persons, or when the parties
 16 are numerous, and it is impracticable to bring them all before the court, one or more may sue or
 17 defend for the benefit of all.”); *see also* 28 U.S.C. § 1332(d)(1)(B). In particular, Plaintiffs bring
 18 this action “on behalf of themselves and on behalf of the [] proposed Class.” Compl. ¶ 82.

19 12. For purposes of removal, CAFA requires that the proposed class consists of at least
 20 100 persons. *See* 28 U.S.C. § 1332(d)(5)(B).

21 13. The Complaint defines the putative class as “[a]ll persons and entities residing in
 22 the United States who, in the last four years from the date of the filing of this complaint: (1) bought
 23 an Apple Product, or (2) paid Apple or an Apple Authorized Service Provider for an Apple Product
 24 repair that was not covered by Apple’s Limited Warranty, AppleCare, or AppleCare+.” Compl.
 25 ¶ 82. The Complaint further alleges that putative class members “likely number *thousands of*
 26 *people*, because Apple has sold and warranted millions of Apple Products and has repaired
 27 thousands of Apple Products.” *Id.* ¶ 85 (emphasis added). Accordingly, the requirement of 28
 28 U.S.C. § 1332(d)(5)(B) is satisfied.

B. There Is Minimal Diversity Among The Parties

2 14. For purposes of establishing federal jurisdiction, CAFA requires only minimal
3 diversity, and a defendant must show only that “any member of a class of plaintiffs is a citizen of
4 a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). “CAFA was intended to
5 strongly favor federal jurisdiction over interstate class actions.” *King v. Great Am. Chicken Corp.,*
6 *Inc.*, 903 F.3d 875, 878 (9th Cir. 2018). Removal is, therefore, proper when even one proposed
7 class member is a citizen of a state different from a defendant’s state of citizenship. *See id.* at 877;
8 *see also Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1276 (9th Cir. 2017) (“Under CAFA
9 there is sufficient diversity to establish federal diversity jurisdiction so long as one class member
10 has citizenship diverse from that of one defendant.”).

11 15. Apple is a California corporation with its principal place of business in California.
12 Compl. ¶ 19. Accordingly, Apple is a citizen of California for purposes of diversity jurisdiction.
13 *See Kuntz v. Lamar Corp.*, 385 F.3d 1177, 1182 (9th Cir. 2004) (“[A] corporation shall be deemed
14 to be a citizen of any State by which it has been incorporated and of the State where it has its
15 principal place of business.” (quoting 28 U.S.C. § 1332(c)(1))).

16 16. According to the Complaint, Plaintiff Granato is a citizen and resident of Illinois;
17 Plaintiff Landrum is a citizen and resident of New Jersey; Plaintiff Ordway is a citizen and resident
18 of Virginia; and Plaintiff Zarad is a citizen and resident of Florida. Compl. ¶¶ 11, 13, 15, 17.
19 Accordingly, Plaintiffs are citizens of Illinois, New Jersey, Virginia, and Florida for purposes of
20 diversity jurisdiction. In addition, Plaintiffs seek to represent a class of “persons and entities
21 residing in the United States.” *Id.* ¶ 82.

22 17. Diversity of citizenship thus exists between Plaintiffs and Apple, or, alternatively,
23 between at least one other member of the proposed class and Apple, and therefore removal is
24 proper. *See* 28 U.S.C. § 1332(d)(2)(A).

C. The Amount In Controversy Exceeds \$5 Million

26 18. CAFA provides that “[i]n any class action, the claims of the individual class
27 members shall be aggregated to determine whether the matter in controversy exceeds the sum or
28 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). The amount in

1 controversy is first determined by reviewing the allegations of the operative complaint. *See*
 2 *Anderson v. Seaworld Parks & Entm't, Inc.*, 132 F. Supp. 3d 1156, 1160 (N.D. Cal. 2015) (“When
 3 determining the amount in controversy, the Court first considers whether it is ‘facially apparent’
 4 from the complaint that the jurisdictional minimum has been satisfied.”). Where a complaint does
 5 not state a dollar amount, a defendant’s notice of removal under CAFA need include “only a
 6 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
 7 *Cherokee*, 574 U.S. at 81.

8 19. Plaintiffs seek, *inter alia*, (i) an injunction “prohibiting Apple from violating the
 9 anti-tying provision of the [MMWA] and from employing the repair restrictions” and other
 10 purportedly “illegal” and “unfair” practices alleged in the Complaint; (ii) “actual damages,
 11 punitive damages, restitution, non-restitutionary disgorgement, and/or any other form of monetary
 12 relief provided by law”; and (iii) “attorneys’ fees and costs of suit, including expert witness fees.”
 13 Compl. ¶¶ 97, 106, 115, 122 & Prayer for Relief ¶¶ B-D, F; *see also Fritsch v. Swift Transp. Co.*
 14 *or Ariz., LLC*, 899 F.3d 785, 793 (9th Cir. 2018) (“Among other items, the amount in controversy
 15 includes damages (compensatory, punitive, or otherwise), the costs of complying with an
 16 injunction, and attorneys’ fees awarded under fee-shifting statutes or contract.”); *Lokey v. CVS*
 17 *Pharm., Inc.*, No. 20-CV-04782-LB, 2020 WL 5569705, at *4-6 (N.D. Cal. Sept. 17, 2020)
 18 (holding defendant’s submissions regarding restitution, attorney’s fees, and costs of injunctive
 19 relief were sufficient to establish the amount in controversy).

20 20. Though the Complaint does not identify a dollar amount, Plaintiffs allege that
 21 “Apple has sold and warranted millions of Apple Products and has repaired thousands of Apple
 22 Products,” Compl. ¶ 85, and Plaintiffs seek to represent a class of persons that “(1) bought an
 23 Apple Product, or (2) paid Apple or an Apple Authorized Service Provider for an Apple Product
 24 repair that was not covered by Apple’s Limited Warranty, AppleCare, or AppleCare+,” *id.* ¶ 82.
 25 Because Plaintiffs seek damages and restitution based on the alleged “wrongfully obtained profits”
 26 that Apple earned from the purchase and/or repair of any Apple products sold in the United States
 27 over a four-year period, *id.* ¶¶ 120-22, the amount in controversy exceeds \$5,000,000. *See Dart*
 28 *Cherokee*, 574 U.S. at 89. For example, even if the putative class was on the low end of Plaintiffs’

1 estimate—one million and one people—the alleged damages per person would only need to be \$5
 2 to exceed the \$5 million threshold.

3 21. Plaintiffs seek injunctive relief as well, which is properly included in the amount-
 4 in-controversy calculation. *See Fritsch*, 899 F.3d at 793. Although the Complaint fails to identify
 5 the specific relief, Plaintiffs state that they seek an order that Apple cease purported repair
 6 restrictions. *See Compl.* ¶¶ 7, 96, 115 & Prayer for Relief, ¶¶ C-D. This request for injunctive
 7 relief could impose costs that would only add to the amount in controversy, which already exceeds
 8 the jurisdictional threshold.

9 22. Apple denies any and all liability, denies that Plaintiffs or members of the putative
 10 class are entitled to the damages and/or restitution that Plaintiffs seek in this action, contends that
 11 Plaintiffs' allegations are entirely without merit, and denies that class treatment is appropriate in
 12 this case. For purposes of this Notice of Removal, however, the amount in controversy exceeds
 13 \$5,000,000, exclusive of interest and costs, and satisfies the amount-in-controversy jurisdictional
 14 requirement of CAFA. *See* 28 U.S.C. § 1332(d)(2).¹

15 **III. VENUE AND INTRA-DISTRICT ASSIGNMENT**

16 23. Venue is proper in this District pursuant to 28 U.S.C. § 1441(a) because the Santa
 17 Clara County Superior Court where the removed case was pending is located within this District.
 18 *See* 28 U.S.C. § 84(a).

19 24. Venue is proper in the San Jose Division of this Court pursuant to Local Rule 3-
 20 2(e), as the original action was filed in Santa Clara County Superior Court.

21 **IV. COMPLIANCE WITH REMOVAL PROCEDURE**

22 25. Plaintiffs purported to effectuate service of the Complaint and Summons on Apple
 23 by personal service to its registered service agent on March 14, 2022. *See* Ex. I (Notice of Service
 24 of Process). Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is
 25 filed within 30 days of service.

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¹ Should Plaintiffs challenge the amount in controversy in a motion to remand, Apple reserves the
 right to further substantiate that the amount in controversy is met.

1 26. Pursuant to 28 U.S.C. § 1446(a), attached hereto and marked as Exhibits A-F and
2 H-I are true and correct copies of the Complaint and all process, pleadings, and orders served upon
3 Apple. Apple has not filed an answer or other response to the Complaint in the Santa Clara County
4 Superior Court prior to removal and is not aware of any pending motions filed in that court.

5 27. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil
6 Procedure. *See* 28 U.S.C. § 1446(a).

7 28. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served
8 on Plaintiffs' counsel and a copy, along with a notice of filing of the notice of removal, is being
9 filed with the Clerk of Santa Clara County Superior Court, California.

10 29. Apple reserves the right to amend or supplement this Notice of Removal. Apple
11 further reserves all rights and defenses, including those available under the Federal Rules of Civil
12 Procedure and the right to compel arbitration pursuant to applicable contract(s). *See, e.g., Morvart*
13 *v. P.F. Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831, 846-47 (N.D. Cal. 2012).

14 V. CONCLUSION

15 30. Apple respectfully requests that this Court exercise jurisdiction over this action and
16 enter orders and grant relief as may be necessary to secure removal and to prevent further
17 proceedings in this matter in the Santa Clara County Superior Court, California. Apple further
18 requests such relief as the Court deems appropriate.

19 | Dated: April 13, 2022

Respectfully submitted,

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